

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2327 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BANK OF BARODA

Versus

KESHAV MILLS LTD.(DELECTED)

Appearance:

Mr. Roshan Desai for Petitioner

MR ASHOK L SHAH for Respondent No. 2

NOTICE SERVED for Respondent No. 3, 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 25 /08/1999

CAV JUDGEMENT

This petition has been filed for quashing the orders dated 31st July, 1978 of the Assistant Commissioner of Payments in Claim Petition no. 249 of 1977 and the order dated 1.5.82 passed in Civil Appeal nos. 132 of 1978 by the District Court, Kheda at Nadiad. The respondent company was declared a sick unit and was taken over by the notification dated 24.11.70 of the

Government of India under section 18(1) of the Industries (Development and Regulation) Act, 1951. The sick unit was taken over on 24th November, 1970 by the Authorised Controller appointed therefor. The petitioner bank filed a claim petition for a sum of Rs. 1,48,893.36 ps. outstanding in its different accounts, but the petitioner's claim was rejected by an order dated 31st July, 1978 as the claim of the petitioner did not fall within category (1) of schedule II of part 1 of the Act. The petitioner being aggrieved by the order passed by the Assistant Commissioner of Payments, filed the above appeal before District Court, Kheda at Nadiad and those appeals have been dismissed by an order dated 1.5.82 and hence, the present petition by the petitioner bank.

2. The learned counsel for the petitioner bank submitted that various documents including agreement of guarantee were executed by the respondents undertaking to pay outstanding amounts of the petitioner Bank. It was the liability of the respondeents to pay the entire amount of the petitioner bank which was undertaken by the Authorised Controller. The lower authorities have committed an error in not categorising the claim of the petitioner bank within category (1) of schedule II of para-A.

3. This Court in the case of State Bank of India vs. New Manekchowk Spinning and Weaving Mills Company Ltd., and others (Special Civil Application No. 3395 of 1981 decided on today has held that loan means an advance whether of money or in kind on interest made by a money lender and shall include a transaction on a bond bearing interest in respect of post liability when a loan is renewed. It is also held that even liability of a sick textile undertaking prior to 1st April, 1974 shall be the liability of such owner. The authorised controller has undertaken the liability of payment of amount of the Bank-petitioners for the pre-take over period unless that liability is discharged by making payment of loan or in any form with interest the owner/Authorised Controller/NTC, that liability will continue and that liability has to be discharged by them. The owner/Authorised Controller/NTC are also required to discharge the liability of payment for period post nationalisation period. The liability continued till 1.4.74 when the liability was re-affirmed prior to the appointed day i.e. 1.4.74 and that liability continues till the loan advanced with interest is discharged. It is not necessary that the loan should be actually given in cash. If the liability has been credited, that would amount to a liability of loan and

that will be considered as loan under the Act and that liability will continue till it is discharged. As such, the entire amount of the bank falls under category 1(a) part I of second schedule of the Act and for that amount, the petitioner bank is entitled.

4. Accordingly, this petition is allowed and the orders passed by both the authorities below are quashed and set aside. The respondent no.2 is directed to pay the entire amount of the petitioner's claim in each account for which the Authorised Controller and other gave guarantee and assurance for the payment, within three months from the date of the presentation of the certified copy of this judgment. Rule is made absolute accordingly with no order as to costs.

...

***darji